

OGC HAS REVIEWED.

17 August 1955

MEMORANDUM FOR THE RECORD

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SUBJECT: Proposed [REDACTED] Administrative Agreement

REFERENCE: (a) Memorandum for OGC from Chief, FE, subject as above,
dated 13 June 1955
(b) Dispatch [REDACTED] to OGC from [REDACTED]
subject as above, dated 22 June 1955
(c) Memorandum for OGC from Chief, FE, subject as above,
dated 23 July 1955

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1. All of the references request the comments of this Office on the proposed Administrative Agreement between [REDACTED] and United Nations Forces. On 12 August 1955, [REDACTED] and myself met with Mr. [REDACTED], [REDACTED] and his three deputies to discuss the draft Agreement.

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2. The discussion centered on Article IV, Criminal Jurisdiction. This section, in the last draft received, is almost identical to Article VII of the NATO Administrative Agreement. The Senate, in ratifying the NATO Administrative Agreement, went on record with these reservations:

"In giving its advice and consent to ratification, it is the sense of the Senate that:

1. The criminal jurisdiction provisions of Article VII do not constitute a precedent for future agreements;

2. Where a person subject to the military jurisdiction of the United States is to be tried by the authorities of a receiving state, under the treaty the Commanding Officer of the armed forces of the United States in such state shall examine the laws of such state with particular reference to the procedural safeguards contained in the Constitution of the United States;

3. If, in the opinion of such commanding officer, under all the circumstances of the case, there is danger that the accused will not be protected because of the absence or denial of constitutional rights he would enjoy in the United States, the commanding officer shall request the authorities of the receiving state to waive jurisdiction in accordance with the provisions of paragraph 3 (c) of Article VII (which requires

the receiving state to give 'sympathetic consideration' to such request) and if such authorities refuse to waive jurisdiction, the commanding officer shall request the Department of State to press such request through diplomatic channels and notification shall be given by the Executive Branch to the Armed Services Committee of the Senate and House of Representatives.

4. A representative of the United States to be appointed by the Chief of Diplomatic Mission with the advice of the senior United States military representative in the receiving state will attend the trial of any such person by the authorities of a receiving state under the agreement, and any failure to comply with the provisions of paragraph 9 of Article VII of the agreement shall be reported to the commanding officer of the armed forces of the United States in such state who shall then request the Department of State to take appropriate action to protect the rights of the accused, and notification shall be given by the Executive Branch to the Armed Services Committees of the Senate and House of Representatives."

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3. [REDACTED] and myself advised the [REDACTED] that since the same provisions the Senate had taken exception to in the NATO Agreement were contained in the [REDACTED] it, and since [REDACTED] standards of justice are much less compatible with those of the United States than are those of the NATO countries, it appeared highly unlikely to us that the Administrative Agreement, as proposed, would even get serious consideration by the State Department. To the extent that this is true, we thought it undesirable for this Office to undertake a full-fledged written commentary on the draft proposal. For the information of those present we went over every article of the criminal jurisdiction section and explained its implications.

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4. [REDACTED] did not know the present status of negotiations regarding the Agreement and agreed with us that if the present draft is as far from an acceptable finished product as we considered it to be, there would be little profit in preparing a written analysis at this time. He agreed to check his State Department counterpart to confirm the status and, if the State Department also felt the document was only something to talk about at this time, to advise the field accordingly.

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5. When requested, we will advise on subsequent drafts.

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[REDACTED]

Note: For an excellent article re the Nato Agreement see Department of State Bulletin, 1 August 1955, "Basic Issues in the Nato Status of Forces Agreement"

Office of General Counsel